



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.05.2017

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P. (MD) No.1077 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

J.Subramanian

... Petitioner

vs.

The Commissioner of Police
Office of the Commissioner of Police
Madurai City

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings issued by the respondent in Na.Ka.B3/21840/72/2013 dated 24.07.2013 and quash the same and consequently direct the respondent herein to give retrospective effect i.e., from 01.03.2012 to petitioner promotion to the post of Grade-I Police Constable instead of 02.04.2013 with all attendant and monetary benefits.

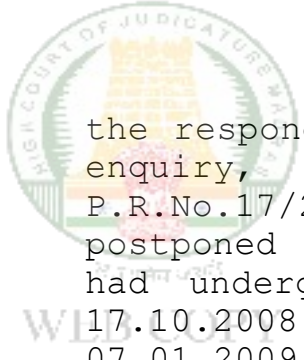
For Petitioner : Mr.C.Jegannathan
for M/s.Veera Associates

For Respondent : Mrs.S.Bharathi,
Government Advocate

O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to call for the records pertaining to the proceedings, issued by the respondent, in Na.Ka.B3/21840/72/2013, dated 24.07.2013, to quash the same and consequently to direct the respondent to give promotion to the petitioner as Grade-I Police Constable with retrospective effect i.e. from 01.03.2012 with all attendant and monetary benefits.

2. The petitioner was recruited as a Grade-II Police Constable on 01.03.2002 and he was posted at Madurai City. When he was working as a Grade-II Police Constable in the Armed Reserve Police at Madurai City, he was subjected to a departmental proceedings by



the respondent, whereby a charge was framed against him and after enquiry, a punishment was imposed, on 17.10.2007 vide P.R.No.17/2007, against the petitioner, by which his increment was postponed for one year without cumulative effect. The petitioner had undergone the said punishment and the same was over by 17.10.2008 and thereafter, he was given the next increment on 07.01.2009.

3. Since the one year punishment was over, no further punishment or disciplinary proceedings were pending against him and he was given further increment on 07.01.2009, the petitioner had given a representation to the respondent to consider his promotion to the post of Grade-I Police Constable in the Armed Reserve Police as number of his batch-mates and juniors had already been given promotion to the said post. Thereafter, the petitioner was given promotion as Grade-I Police Constable by the respondent vide proceedings, dated 02.04.2013. In fact, the said promotion was given only with effect from 01.03.2013, whereas the petitioner was entitled to get the same from 01.03.2012. As the time bound promotion was given to the juniors and batch-mates of the petitioner, he had made a request to the respondent that his promotion should be with effect from 01.03.2012 instead of 01.03.2013.

4. The said request was considered and the same was rejected by the respondent through his order dated 24.07.2013. In the said order, the respondent has stated that the request of the petitioner was considered as per the Government Letter, dated 07.03.2013 and since the benefits have been given, pursuant to the said Government Letter, only prospectively i.e., after 07.03.2013, the petitioner's request to give promotion with retrospective effect merely because he was otherwise eligible to get the same with effect from 01.03.2012 cannot be considered and therefore, his request was rejected. Challenging the said order of the respondent, dated 24.07.2013, the petitioner has filed the present writ petition with the aforesaid prayer.

5. Mr.C.Jegannathan, learned counsel appearing for the petitioner would submit that the petitioner's punishment of postponement of increment for one year without cumulative effect as on 17.10.2007 was over by 17.10.2008 and thereafter, further increment was given to him with effect from 07.01.2009 and therefore, when the case of the petitioner was considered for promotion to the post of Grade-I Police Constable as on 01.03.2012 along with others, such promotion given to the petitioner's juniors and batch-mates should have been given to him with effect from 01.03.2012 itself, instead his promotion was postponed for further one year and it was given by order dated 02.04.2013 only



with effect from 01.03.2013. Therefore, postponement of the petitioner's promotion by the respondent is totally unjustifiable. In this regard, the learned counsel for the petitioner would submit that the law has been declared by this Court in a Full Bench Judgment in the case of *The Deputy Inspector General of Police, Thanjavur Range and others vs. V.Rani*, reported in 2011 (3) CTC 129. In view of the law having been declared in the said judgment by the Full Bench of this Court, after the currency of punishment was over, if the petitioner become eligible otherwise to get promotion as on 01.03.2012, his promotion should be with effect from that date, and therefore, postponement of promotion and giving it only with effect from 01.03.2013, is totally unjustifiable and when the same was requested to be rectified, it was unfortunately rejected by the respondent and hence the impugned order is liable to be interfered with.

6. Per contra, Mrs.S.Bharathi, learned Government Advocate appearing for the respondent, would submit that the petitioner was imposed with the punishment of postponement of increment for one year without cumulative effect, which ended admittedly only on 17.10.2008. Only thereafter, from 07.01.2009 alone, he was considered to grant further increment. Since it is a time bound promotion given to those eligible candidates as on 01.03.2012, on the said date, the five years period after currency of punishment was not over, promotion was given to the petitioner only after completion of five years, that is why, promotion was given to him only with effect from 01.03.2013 instead of 01.03.2012 and therefore, there is every justification in giving promotion to the petitioner from the said date i.e., 01.03.2013.

7. In this regard, the learned Government Advocate would rely upon para 6 of the Counter Affidavit which reads thus:

"6. His representation dated: 10.05.2013 was received and examined. It is submitted that in the light of the observations of the full Bench of the High Court, Madras dated 13.06.2012 in W.P.No.14903/2012, a Government servant is entitled to be considered for promotion to the next post only after the currency of punishment period is over, if otherwise eligible and the embargo put on him for being considered for a further period after the period of minor punishment is over, in the name of check period is illegal and impermissible under the statutory rule as per Government letter No.49368/Pol.3/2012-4 Home (Pol.III) Dept. Dated: 07.03.2013. The Instructions with regard to impact of punishment/ Charges on time bound upgradation, the date of taking into consideration of the punishment cases prior to the date of issue of the Government order was not mentioned in the above



Government letter. Based on it, necessary endorsement was already issued to the petitioner vide in C.No.B3/21840/72/2013, dated : 24.07.2013."

8. The learned Government Advocate would also submit that pursuant to the judgment of the Full Bench of this Court (cited supra), the Government issued a letter No.49368/POL-3/2012-4, dated 07.03.2013, wherein, the Government, after referring to the judgment of the Full Bench of this Court (cited supra), has issued the following directions:

"2. In this connection, I am to state that the High Court in this case, has decided to scope of G.O.(Ms.) No.368, P&AR Dept. dated 18.10.1993 and other instructions governing the preparation of panel for promotion / recruitment by transfer and observed among other things as follows:-

During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion. xxx xxx xxx. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

xxx xxx xxx

"Consequently, the embargo put on the right, of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period', viz. one year in the case of censure and five years in the case of other minor punishments is illegal and impermissible under the statutory rule".

In the light of the observations of the Full Bench of the High Court, Madras, dated 13.06.2012 in W.P.No.14903/2012, a Government servant is entitled to be considered for promotion to the next post after the currency of punishment period, if otherwise eligible and the embargo put on him for being considered for promotion for a further period after the period of minor punishment is over, in the name of check period is illegal and impermissible under the statutory rule. The SLP filed against the said Full Bench decision has also been dismissed by the Supreme Court by its order dated 16.03.2012 in SLP (Civil) Nos.4126-4141/2012. As such, the said Full Bench decision has become final and hence the guidelines issued in G.O(Ms.)No.368, P&AR Department,



dated 18.10.1993 and other letters cannot be equated with the statutory rules and which have been held in the said Full Bench decision as having no legal force cannot be followed.

3. I am, therefore, to request you to examine the case in the light of the above and take action accordingly."

9. By quoting the above said letter, the learned Government Advocate would submit that pursuant to the clarification issued by the Government through the said letter dated 07.03.2013, promotions would be considered prospectively. In other words, only after 07.03.2013, the law declared by the Full Bench (cited supra), has been given effect to by the Government and therefore, if at all any promotion sought for prior to the said date, the same cannot be considered, as in the meantime Rule 4(a) of the Tamil Nadu State Sub-ordinate Service Rules was in the statute book and that was in force. Therefore, there is every justification on the part of the respondent to deny promotion to the petitioner with effect from 01.03.2012, since he was eligible to get the same only with effect from 01.03.2013 and therefore, confirming the said position, the present communication has been issued as a reply to the petitioner and therefore, the impugned order requires no interference of this Court.

10. This Court has considered the rival submissions made by the both sides.

11. The issue involved in this writ petition is in a very narrow compass. It is an admitted fact that the petitioner was imposed with punishment of postponement of increment for one year without cumulative effect from 17.10.2007 till 17.10.2008. Thereafter, since the currency of punishment was over, he was considered for giving further increment on 07.01.2009. In view of the said punishment between 17.10.2007 and 17.10.2008, whether the petitioner is entitled to be considered for promotion as on 01.03.2012 to the post of Grade-I Police Constable is the issue to be considered. In this regard, the learned Government Advocate would submit that Rule 4(a) of the Tamil Nadu State and Sub-ordinate Service Rules was in force at the relevant point of time. According to which, if any other punishment other than censure is issued, from the date of currency of the punishment, five years of check period is there and within which, if the crucial date or the date for consideration for promotion falls, then the incumbent would not be considered for promotion within such date. In other words, only after completion of five years from the date of currency of punishment, other than censure, the incumbents would be considered for promotion, even if they otherwise qualified to get promotion. When that statutory rule was in force, it cannot be given a go-by and therefore, since admittedly the petitioner



was imposed with the punishment of postponement of increment till 17.10.2008, he cannot be considered for promotion within a period of five years.

12. Insofar as the said argument advanced by the learned Government Advocate is concerned, it was the submission of the learned counsel appearing for the petitioner that this issue has been considered by the Full Bench of this Court in the case of V.Rani (cited supra). In this regard, the learned counsel for the petitioner would rely upon Para 28(1) of the said judgment of the Full Bench, which reads thus:

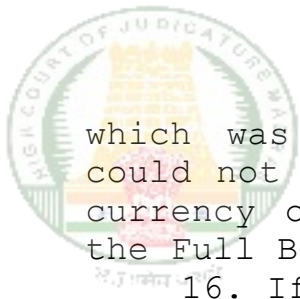
"Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

(1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category " merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadu, rep. by its Secretary, Chennai and others, 2008 (5) MLJ 350, stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

13. The words "it is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible" would have the primacy in deciding the issue raised in this writ petition. According to the Full Bench decision, once the currency of punishment period is over, then the Government servant would be entitled to be considered for promotion to the next post, if otherwise eligible.

14. After the Full Bench judgment, though the same declared the law on 27.04.2011 itself, nearly after two years, i.e., on 07.03.2013 only, the Government issued the letter No.49368/POL-3/2012-4, and the relevant portion of the said letter has already been extracted as herein above, wherein the Government has accepted the said decision and has issued a clarification to examine the cases of promotion in the light of the above clarification issued by the Government, pursuant to the Full Bench judgment of this Court.

15. When this Court has declared a Law on 27.04.2011 itself, whereby it has answered to the reference in the said words that the Government servant is entitled to be considered for promotion, after the currency of punishment period to the next post, then the said law will prevail upon any rule muchless rule 4(a) of the Tamil Nadu State and Sub-ordinate Service Rules and therefore, the claim made in this regard by the respondent through the learned Government Advocate that in view of Rule 4(a) of the said Rules,



which was in force during the relevant period, the petitioner could not have been considered for next promotion, even after the currency of punishment, does not match with the law declared by the Full Bench of this Court (cited supra).

16. If the law declared by this Court (cited supra) is applied to the case of the petitioner, as he has completed the currency of punishment as early as on 17.10.2008 and he was considered for next increment on 07.01.2009, then certainly there can be no further impediment on the part of the respondent to consider the case of the petitioner for giving promotion when it become actually due to the petitioner and others who are similarly placed candidates with that of the petitioner. In this case, since others were considered with effect from 01.03.2012 and promotions were given to them with effect from that date, the petitioner also since otherwise eligible to be considered for promotion on the said date, the said promotion should have been given with effect from 01.03.2012 instead of 01.03.2013. Therefore, there is every justification on the part of the petitioner to claim his right of promotion from 01.03.2012 and therefore, rejection of his request by the respondent through the impugned order is certainly unjustifiable and therefore it is liable to be interfered with.

17. For all these reasons, this Court is of the considered view that the impugned order is liable to be interfered with and accordingly, the same is quashed.

18. The respondent is directed to consider the case of the petitioner for giving promotion to the post of Grade-I Police Constable with effect from 01.03.2012 instead of 01.03.2013 and to pass a suitable modified order to that effect within a period of eight weeks from the date of receipt of a copy of this order.

19. It is needless to mention that once the petitioner gets his promotion with effect from 01.03.2012, he shall be eligible to get other service benefits also.

20. With these directions, the writ petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To:

The Commissioner of Police,

Office of the Commissioner of Police, Madurai City.

Skm/cmr/krk

RL/2C/7P/SKN/RSK/SAR1/7/11/2017

W.P.(MD) No.1077 of 2014
and

M.P.(MD) Nos.1 and 2 of 2014
12.05.2017